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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re K. G. et al., Persons Coming Under the Juvenile Court Law.	
SAN DIEGO COUNTY HEALTH AND HUMAN SERVICES AGENCY, Plaintiff and Respondent, v. ALEX G., Defendant and Appellant.	D056175 (Super. Ct. No. NJ14090A-B)

APPEAL from an order of the Superior Court of San Diego County, Blaine K. Bowman, Judge. Affirmed.

Alex G. appeals an order in which the court found that he was offered or provided reasonable services. We conclude that the error was harmless, and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

K. G., born January 2007, and M.G., born July 2008, are the children of Alex and Michelle G. Michelle also has two other children from her first marriage (siblings).

In October 2008 the San Diego County Health and Human Services Agency (Agency) offered voluntary services to the family after the Agency confirmed a report of domestic violence. Alex had grabbed Michelle by the hair and dragged her throughout the house, choked her, pushed her face into the floor and unplugged the telephone to prevent her from calling for help. The children were present. After another incident of domestic violence, Michelle obtained a temporary restraining order against Alex, but soon allowed him to return home.

In December 2008 the Oceanside Police Department investigated allegations that Alex had committed a lewd and lascivious act against the children's five-year-old sibling, and contacted the Agency for help in removing the children from the home. Alex said he had been rocking the sibling on his lap in a straddle position. He became aroused and pulled his penis up. He also disclosed he had climbed into bed to touch a 10-year-old girl, and had used methamphetamine and alcohol. When asked what other illegal substances he had tried, Alex responded, "Everything, anything."

In February 2009 the children were adjudicated dependents of the court on the grounds they were at substantial risk of suffering serious physical harm due to ongoing domestic violence, and were at substantial risk of sexual abuse due to Alex's abuse of a

half sibling. (Welf. & Inst. Code § 300, subds. (b), (j).) (Further statutory references are to the Welfare & Institutions Code.)

Consistent with the Agency's initial case plan recommendations, the court ordered Alex to participate in a substance abuse treatment program, a domestic violence treatment program and parenting classes. Shortly after the disposition hearing, the Agency amended the case plan to require Alex to participate in individual therapy.

During the first six-month review period, Alex completed a parenting class. He graduated from a substance abuse treatment program with 100 percent compliance and maintained regular attendance at 12-step meetings. His therapist reported that Alex was fully engaged in the therapeutic process. Neither parent violated the restraining order. The Agency allowed Alex to have unsupervised overnight visits with the children, who had been placed in Michelle's care.

In its initial report for the six-month review hearing, the Agency recommended the court terminate jurisdiction. Less than a month later, the Agency filed an addendum report in which it stated, "It has come to the attention of the Agency that [the issue of sexual abuse] has not been sufficiently addressed in treatment. As a result, the Agency is changing [its] recommendation from termination of jurisdiction to [six] more months of services for the family. The Agency is also amending the [case plan] to include sexual abuse treatment for the father."

Shortly before the review hearing, the Agency learned Alex had been arrested for battery after he repeatedly hit a man in the face without provocation, injuring him. The Agency also learned Alex had been charged with assault with a deadly weapon after he

became angry with another driver and deliberately rammed his vehicle into the back of the driver's car. Alex was incarcerated.

At the six-month review hearing, the social worker stated the lack of sexual abuse treatment requirement was an oversight. He and the Agency forgot about the sexual abuse finding under section 300, subdivision (j) until August 2009. The Agency then amended the case plan to include sexual abuse treatment for Alex. County counsel stated, "[E]verybody dropped the ball here."

Michelle testified she did not believe her children were at risk of harm in Alex's care. He had never been aggressive with the children. She did not believe the Agency took the sexual abuse finding seriously because it did not fully investigate the incident and the issue was never raised in court. Based on her testimony, the court determined Michelle required additional services, including a psychological evaluation, but did not remove the children from her care.

The court found that the Agency erred when it did not include sexual offender treatment in the initial case plan. It deemed the error "negligible" and found that reasonable services had been provided. Alex had received many services, including substance abuse treatment, individual therapy, domestic violence treatment and parenting education. The court ordered Alex to attend individual therapy to address sexual abuse and anger management issues, and set a 12-month review hearing.

DISCUSSION

Alex contends he was not provided reasonable services during the first six-month review period because sexual abuse treatment was a prerequisite to successful family

reunification within the statutory time period. He asserts he was prejudiced because the reasonable services finding may affect the outcome of the next review hearing and the selection of the children's permanent plan. Alex requests that this court remand the matter to the juvenile court with directions to enter an order finding that reasonable services were not provided.

The Agency argues there is substantial evidence to support the court's reasonable services finding in view of the totality of the services offered or provided to the family. The Agency contends error, if any, is harmless in view of the court's finding Michelle required additional services to safely maintain the children in her care.

At the disposition hearing, unless specified exceptions apply, the court must offer or provide services that are designed to reunify the family within a statutory time period. (*In re Alanna A.* (2005) 135 Cal.App.4th 555, 564; § 361.5; see 42 U.S.C., § 629a(a)(7).) Family reunification services include a full array of social and health services to help the child and family and to prevent re-abuse of the child. (§§ 300.2, 16501, subd. (h).)

The social services agency must make a good faith effort to develop and implement a reunification plan. (*In re Jasmon O.* (1994) 8 Cal.4th 398, 424; *In re Christina L.* (1992) 3 Cal.App.4th 404, 414, 417.) The purpose is "to eliminate those conditions that led to the court's finding that the child is a person described by Section 300" and to return the child to a safe home. (§§ 362, subd. (c), 366, subd. (a)(1)(B), (E).)

At the six-month review hearing, the court is required to determine whether the agency offered or provided reasonable services. (§ 366.21, subd. (e); see § 366, subd. (a)(1)(B) .) "The adequacy of reunification plans and the reasonableness of the

[Agency's] efforts are judged according to the circumstances of each case. (*In re Edward C.* (1981) 126 Cal.App.3d 193, 205 [A plan 'must be appropriate for each family and be based on the unique facts relating to that family'].)" (*Robin V. v. Superior Court* (1995) 33 Cal.App.4th 1158, 1164.) The remedy for failing to offer or provide reasonable services is to extend the reunification period and continue services. (*In re Alvin R.* (2003) 108 Cal.App.4th 962, 975; see § 366.21, subd. (g)(1)(C) [court may not set a § 366.26 hearing unless there is clear and convincing evidence that reasonable services have been offered or provided to the parent].)

We review the court's reasonable services finding for substantial evidence. (*In re Alvin R., supra*, 108 Cal.App.4th at p. 973.)

The court correctly found that the Agency erred when it did not include sexual offender treatment in the initial case plan. We disagree with the court's conclusion that such an omission was "negligible," meaning that it was "unimportant or of so little consequence as to warrant little or no attention." (Webster's 3d New Internat. Dict. <http://www.webster-meriam.com/dictionary/negligible> [as of Apr. 5, 2010].) An initial case plan should identify the treatment components the social worker knows are necessary for family reunification. (*Robin V. v. Superior Court, supra,* 33 Cal.App.4th at pp. 1164-1165; *In re Riva M.* (1991) 235 Cal.App.3d 403, 414.) The Agency has the responsibility to develop an appropriate case plan, not the parent. (*In re Riva M., supra,* at p. 414.)

While reunification services need not be perfect, they should at minimum directly relate to the conditions that gave rise to the dependency. (§§ 362, subd. (c), 366, subd.

(a)(1)(B), (E).) To sustain a reasonable services finding, long-established authority holds that "the record should show that the supervising agency identified the problems leading to the loss of custody" and "offered services designed to remedy those problems." (*In re Riva M., supra,* 235 Cal.App.3d at p. 414; *Robin V. v. Superior Court, supra,* 33 Cal.App.4th at p. 1165.) Here, the record shows the Agency did not meet these requirements. We conclude there is not substantial evidence to support the reasonable services finding.

Had an extension of services not been required but for the lack of sexual abuse treatment, the error would have prejudiced Alex and his family, and would require reversal. Alex's criminal acts and incarceration clearly warranted an order of continued services, as did Michelle's lack of recognition of the risks to the children from Alex's volatile behaviors. The court determined Michelle required additional services and continued services to the family on that ground. Further, Alex received the remedy he now requests—an extension of services until the next review hearing. (*In re Alvin R., supra,* 108 Cal.App.4th at p. 975.) We therefore conclude that the error is harmless and does not require reversal. (Cal. Const. art. VI, § 13; *People v. Watson* (1956) 46 Cal.2d 818, 836.)

DISPOSITION

The order is affirmed.

McINTYRE, J.

WE CONCUR:

HALLER, Acting P. J.

IRION, J.